

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of : DETERMINATION
HILDA HUTCHINSON : DTA NO. 831036
:

Petitioner, Hilda Hutchinson, filed a petition in protest of an assessed property value.

On April 27, 2023, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (James Passineau, Esq., of counsel), submitted a letter in support of the dismissal. Petitioner, appearing pro se, did not submit a response by May 30, 2023, which date began the 90-day period for the issuance of this determination. After due consideration of the documents submitted, Donna M. Gardiner, Supervising Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Tax Appeals has subject matter jurisdiction over the petition.

FINDINGS OF FACT

1. Petitioner, Hilda Hutchinson, filed a petition with the Division of Tax Appeals on May 27, 2022.
2. A statutory notice or conciliation order was not attached to the petition.
3. On August 16, 2022, the Division of Tax Appeals made a written request to petitioner for a copy of the statutory notice being protested.
4. Petitioner did not provide any statutory notice.

5. On April 27, 2023, the Division of Tax Appeals issued to petitioner a notice of intent to dismiss petition. The notice stated, in sum, that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was not in proper form and, pursuant to Tax Law § 2008, the Division of Tax Appeals does not have jurisdiction over assessed property values.

6. On May 19, 2023, in response to the notice of intent to dismiss petition, the Division of Taxation (Division) submitted a letter that stated:

“[t]he Division of Taxation is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. Tax Law § 2008 does not have jurisdiction over assessed property value [sic] as petitioned here and because the petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner [sic] the Division is in agreement with the proposed dismissal.”

7. Petitioner did not submit a response to the notice of intent to dismiss petition.

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom New York State Dept. of Taxation and Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.*). The Division of Tax Appeals is authorized “[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such a hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]).

All proceedings in the Division of Tax Appeals “shall be commenced by the filing of a petition . . . protesting any written notice of the division of taxation which has advised the petitioner of a tax deficiency, a determination of tax due, a denial of a refund or credit application . . . or any other notice which gives a person the right to a hearing” (Tax Law § 2008

[1]).

B. Pursuant to 20 NYCRR 3000.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of the petition, a legible copy of the order of the conciliation conferee if issued; if no such order was previously issued, a legible copy of any other statutory notice being protested.” In this case, no statutory notice was attached.

C. On August 16, 2022, the Division of Tax Appeals made a written request asking petitioner to supply a statutory notice. She failed to do so. Additionally, the Division of Tax Appeals informed petitioner that, pursuant to Tax Law § 2008 (1), the Division of Tax Appeals does not have jurisdiction over assessed property values such as the one petitioned here. Where petitioner fails to correct the petition within the time prescribed, the supervising administrative law judge will issue a notice of intent to dismiss petition (*see* 20 NYCRR 3000.3 [d] [2]). Such notice of intent to dismiss petition was issued on April 27, 2023. Petitioner failed to respond.

As petitioner failed to attach a statutory notice and the petition was in protest of an assessed property value, pursuant to Tax Law § 2008 (1), the Division of Tax Appeals lacks jurisdiction over the subject matter of the petition and, therefore, dismissal is warranted (*see* 20 NYCRR 3000.3 [d] [2]; 3000.9 [a] [4] [i]; *see Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022).

D. It is ORDERED, on the motion of the supervising administrative law judge, that the petition is dismissed with prejudice as of this date.

DATED: Albany, New York
August 17, 2023

/s/ Donna M. Gardiner
SUPERVISING ADMINISTRATIVE LAW JUDGE